

CITY OF CHARLOTTESVILLE  
*"A World Class City"*



Office of the City Attorney  
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November 16, 2018

Brown, Edwards & Company, LLP  
319 McClanahan Street, S.W.  
Roanoke, VA 24014

*Confidential & Privileged*

RE: City of Charlottesville - Request for Audit Information  
Fiscal Year Ending June 30, 2018

Dear Sir or Madam:

By letter to me from Glen Pack, the City's Comptroller, dated August 9, 2018, received by me on August 9, 2018, our office was asked to identify certain pending or threatened litigation, and certain unasserted claims and assessments, which would relate to your audit for the year ending June 30, 2018. He asked that our response cover material matters as to which our office has been engaged or to which we have devoted substantive attention on behalf of the City in the form of legal consultation or representation. He also asked that our response include matters that existed on June 30, 2018, and those matters arising between that date and the date of our response.

The essence of Mr. Pack's request is that we identify "material matters" (items involving amounts exceeding \$100,000 individually or items involving lesser amounts which exceed \$100,000 in the aggregate). This direction is intended to eliminate suits and claims that are so small that they are extremely unlikely to have any adverse effect on the City's fiscal integrity. Given the City's existing general liability insurance coverage<sup>1</sup>, and the legal and factual exigencies of each lawsuit, we doubt that any one pending suit is likely to have a substantial adverse effect on the City's fiscal integrity. However, to be conservative and consistent with your \$100,000 definition of materiality, we will report almost every lawsuit against the City that seeks monetary damages. We will omit what we consider at this time to be very minor or frivolous claims that have yet to become lawsuits. In accord with the instructions,

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<sup>1</sup> The City is insured under the VML Insurance Programs for general liability, police enforcement activities, and public officials' errors and omissions coverage in the amount of \$1,000,000 per occurrence plus a \$10,000,000 umbrella policy, with no deductible.

definitions, and descriptions contained in Mr. Pack's letter and for the time period delineated above, we respond as follows:

**Reporting Date: November 16, 2018**  
**PENDING OR THREATENED LITIGATION**  
**(excluding unasserted claims and assessments)**

**A. SUITS FILED**

**1. Charlottesville Parking Center, Inc. v. City of Charlottesville**

Charlottesville Parking Center, Inc. (“CPC”) and the City of Charlottesville each own parking spaces in the Water Street Parking Garage. The Garage is managed by a condominium association Board of Directors, with Board members appointed by CPC and the City. In March 2016 CPC filed suit against the City in Charlottesville Circuit Court, alleging that in December 2015 the City improperly refused to raise the garage parking rates to a level CPC considered to be market rate. In the lawsuit CPC sought \$1,000,000 in damages, and an injunction against the City’s participation in the management of the Garage. A second action was filed by CPC in June 2016, seeking the appointment of an emergency receiver to operate the Garage. The Court granted the City’s Demurrer and dismissed the second lawsuit, and CPC did not appeal. A settlement agreement was reached between the parties with respect to the initial lawsuit.

**2. Dickerson Homes and Development LLC v. City Planning Commission, et al.**

Dickerson Homes filed suit in the Charlottesville Circuit Court on June 10, 2016 against the City, its Planning Commission, and the Director of Neighborhood Development Services because in April 2016 the Planning Commission denied approval of Dickerson’s site plan for a proposed development. The suit also alleged that the site plan denial was a violation of Dickerson’s due process rights, and requested an unspecified amount of damages. The Complaint was served on the City on October 6, 2016. VML Insurance appointed the law firm of Zunka, Milnor & Carter as defense counsel for the City, and they filed a demurrer seeking a dismissal of the action. To date Dickerson has not taken any action to prosecute this case. In my opinion, any settlement or judgment will not exceed the limits of the City's insurance coverage.

**3. Tracy Franklin v. City of Charlottesville D/I: July 25, 2015**

Tracy Franklin allegedly suffered personal injury as a passenger on a City Transit bus on July 25, 2015 when the bus suddenly accelerated before he reached a seat. The Notice of Claim was received December 14, 2015 and sent to Virginia Transit Liability Pool (VTLP). Mr. Franklin filed suit on July 7, 2017 in Charlottesville Circuit Court asking for \$250,000.00 in damages. The law firm of Zunka, Milnor and Carter was hired by VTLP to act as defense counsel. An

Answer was timely filed, and a Motion to Dismiss the case was filed on August 7, 2017. The Court dismissed the case with prejudice by Order entered May 15, 2018.

**4. Frederick W. Payne, et al. v. City of Charlottesville**

Nine individuals and two organizations filed suit in Charlottesville Circuit Court against the City of Charlottesville, the Charlottesville City Council, and five current and former City Councilors, in their individual capacities. Plaintiffs are aggrieved by a decision of City Council adopting Resolutions directing the removal of the statue of Robert E. Lee from a downtown City park and calling for redesign of two downtown parks, one of which includes a statue of Stonewall Jackson. The lawsuit seeks declaratory and injunctive relief, monetary damages, and attorneys' fees under a state law (Va. Code §15.2-1812, §15.2-1812.1) that prohibits removal, disturbance, interference, encroachment upon or violations of certain specified war memorials or memorials to war veterans. VML Insurance appointed defense counsel (Zunka, Milnor & Carter) to assist in the defense of the suit; later VML Insurance notified the City that it had reached the limits of its coverage. Currently the City and City Council are represented by the City Attorney's Office, assisted by outside counsel on an hourly fee basis. One former City Councilor sued in his individual capacity is represented by the City Attorney's Office. Three current City Councilors, and one former City Councilor, sued in their individual capacities are represented by outside pro-bono counsel, assisted by the City Attorney's Office. In an October 2017 ruling the Court dismissed the Plaintiffs' claim for monetary relief since there was no allegation of physical damage to the statue; the Court has revised its ruling to state that it is possible that the Plaintiffs could prevail at trial by establishing a violation or encroachment upon the statue(s) without physical damages, which might result in all defendants being liable for plaintiffs attorneys' fees award. In 2017 the Court issued a preliminary injunction prohibiting the City and City Council from removing the statues after finding that the Plaintiffs are likely to prevail on their claim for permanent injunctive relief. Trial is scheduled for January 2019. While damages, if any are proved, are likely to be minimal (based on the Court's current rulings) if the plaintiffs prevail and receive an award of attorneys' fees, we would estimate that an attorneys' fees award might range from \$100,000 to \$400,000. Any recovery of damages, litigation costs or attorneys' fees in this case will not be covered by insurance.

**5. Robert Sanchez Turner v. Al Thomas, Jr. and City of Charlottesville. D/I: August 12, 2017**

Robert Sanchez Turner filed suit in the United State District Court for the Western District of Virginia on August 31, 2017 against City Police Chief Al Thomas, Jr., the City of Charlottesville and W. Steven Flaherty, Virginia State Police Superintendent, alleging personal injury due to inaction of police officers at the Unite the Right rally on August 12, 2017 in the City's downtown area. Plaintiff is seeking unspecified monetary damages, punitive damages, attorney's fees and expenses. VML Insurance was notified and hired the law firm of Zunka, Milnor and Carter as defense counsel. The City filed a Motion to Dismiss for failure to state a claim, and the Court granted the City's motion by Order entered May 29, 2018. The Plaintiff filed a Notice of Appeal to the Fourth Circuit Court of Appeals on June 28, 2018. In my opinion the City has valid defenses to liability in this action, and if there is a judgment or

settlement of the claims against the City it will not exceed the limits of the City's insurance coverage.

**6a. Jason Kessler v. City of Charlottesville. D/I: December 2017**

In December of 2017 the City denied issuance of a special events permit to Jason Kessler for an anniversary rally the weekend of August 11-12, 2018 in a City park. Kessler filed suit in the U.S. District Court for the Western District of Virginia alleging violations of his First and Fourteenth Amendment constitutional rights. VML Insurance hired the law firm of K&L Gates to defend the City, with the Acting City Attorney as co-counsel. The suit was voluntarily dismissed by the Plaintiff by Order entered August 3, 2018.

**6b. Jason Kessler, et al. v. City of Charlottesville, et al.**

On November 7, 2018 Jason Kessler and three co-defendants filed a lawsuit against the City of Charlottesville, Virginia, former City Police Chief Al Thomas, and Virginia State Police Lieutenant Becky Crannis-Curl, in the U.S. District Court for the Western District of Virginia. The City has not been served with process as of the date of this response, and has not yet received from VML Insurance confirmation of coverage. The lawsuit ostensibly is brought under 28 USC §§2201 and 2202 and 42 USC §1983, alleging that the Plaintiffs' constitutional rights were violated in August 2017 after a "Unite the Right" rally that they sponsored resulted in mayhem, violence and death. Plaintiffs seek declaratory and injunctive relief, nominal damages, compensatory damages in an unspecified amount, punitive damages in an unspecified amount, litigation costs and attorneys fees. To the extent that their theories of recovery include "failure to protect" arguments, those claims should be dismissed, consistent with the result in the *Turner* case (see Paragraph 5, preceding above).

**7. Natalie Jacobsen and Jackson Landers v. City of Charlottesville, Department of State Police, and Virginia Secretary of Public Safety and Homeland Security**

In November 2017 the above-named Petitioners filed a Petition for Writ of Mandamus in Charlottesville Circuit Court alleging that Defendants had not complied with the Virginia Freedom of Information Act, Virginia Code Sec. 2.2-3700, *et seq.* with respect to requests for public records related to the August 12, 2017 Unite the Right rally held in Charlottesville (the public safety operations plan). The City settled the matter with the Petitioners by providing a redacted copy of the document being sought by the Petitioners.

**8. Joni Raskin v. City of Charlottesville. D/I: September 2, 2015**

Joni Raskin slipped and fell on September 2, 2015 in a City-owned swimming pool building (Smith Aquatic Center) and injured her arm. A notice of claim was received in 2015 and forwarded to VML Insurance for investigation. Plaintiff's attorney filed suit in August 2017, but withheld service of process. A settlement offer was accepted by the Plaintiff, and an Order Granting Non-Suit was entered on September 20, 2018.

**9. William N. Evans v. City of Charlottesville. D/I: January 25, 2018**

William Evans filed a Petition for Writ of Mandamus in Charlottesville Circuit Court on January 25, 2018, alleging the City had refused to provide a video involving the death of Heather Heyer on August 12, 2017. The video was in the custody of the City Police and was being used as evidence in a criminal case. The City declined to provide a copy of the video, citing an exemption under Va. Code Sec. 2.2-3706(A)(2)(a). By letter opinion dated September 25, 2018, the Court ruled in favor of the City.

**10. Morgan Hopkins v. City of Charlottesville. D/I: 8/12/2017**

Ms. Morgan Hopkins was arrested by a City police officer on August 12, 2017 for indecent exposure (engaged in a musical performance while topless). She sued the City in federal court alleging violations of her Constitutional rights. VML Insurance hired the law firm of Zunka, Milnor and Carter to defend the City. The Court ruled in favor of the Plaintiff and the City declined to appeal the decision.

**11. Joy Johnson, et al. v. City, et al.**

Joy Johnson and others filed suit in Charlottesville Circuit Court declaring that the City's engagement of law firm Hunton & Williams to provide a written report on the rally-related events of the summer of 2017 (the "Heaphy Report") was unlawful. By Order entered September 18, 2018, judgment was decided in favor of the Defendants and the case was dismissed.

**12. Antoine Poteat v. Detective Lee Gibson.**

Antoine Poteat filed a Complaint in the U.S. District Court for the District of Maryland Greenbelt, alleging that City Police Detective Lee Gibson in 2014 made false statements that resulted in his arrest in Maryland and unlawful detention of Plaintiff in Virginia. The charges against Plaintiff in Virginia were subsequently dismissed on July 14, 2014. Plaintiff is asking for \$600,000 in compensatory and punitive damages. The suit was reported to VML Insurance and the law firm of Bancroft, McGavin, Horvath & Judkins in northern Virginia was hired as defense counsel for Detective Gibson. Discovery is in progress. In my opinion the City has valid defenses to liability in this action, and any judgment or settlement of the claim against the City will not exceed the limits of the City's insurance coverage.

**13. Shulls Wrecker v. Larry Sipe, et al. D/I: October 2014**

Tommy Shulls of Shulls Wrecker filed suit in Albemarle County Circuit Court on June 4, 2018 against two other wrecker businesses and Larry Sipe, a part-time Community Services Officer (CSO) with the City Police Department. The suit alleges that CSO Sipe conspired with the other defendants to divert towing requests from Shulls to the other defendants. The Plaintiff is asking for compensatory and punitive damages, and attorney's fees, totaling almost \$7 million dollars. The suit was referred to VML Insurance, and the law firm of Zunka, Milnor & Carter

was hired as defense counsel. Discovery is in progress, and a hearing on the Defendant's Demurrer is scheduled for November 16, 2018. In my opinion the City has valid defenses to liability in this action, and if there is a judgment or settlement of the claims against the City it will not exceed the limits of the City's insurance coverage.

#### **14. Stacey Campbell v. Michael Murphy, City Manager**

Stacey Campbell filed a Warrant in Debt in Charlottesville General District Court, naming "Charlottesville Va City Manager Mike Murphy" as the defendant, with a return date of November 13, 2018. The warrant does not list any monetary damages. She alleges the City does not provide enough safe and affordable housing for low-income individuals. VML Insurance was notified and the firm of Zunka, Milnor and Carter was hired as defense counsel.

The ongoing defense of many of these suits is being handled by outside counsel, who we have identified. Those attorneys can recite more details about the amount of exposure, if any, these suits carry for the City.

#### **B. CLAIMS ONLY**

##### Minor, Jennifer, on behalf of minor child, Shanese Minor. D/I: June 25, 2015

Jennifer Minor, mother of a 13 year old girl, sent a Notice of Claim dated September 25, 2015 to the City alleging severe injuries to her daughter on June 25, 2015, when a Police K-9 dog attacked her at a crime scene where she was a bystander. The child was bitten multiple times, and was taken to the hospital for treatment. The claim was referred to VML Insurance on September 30, 2015 and negotiations for settlement are in progress. At this point, under the facts that are known, there appears to be a significant likelihood of City liability in this case. In my opinion, however, any settlement or judgment will not exceed the limits of the City's insurance coverage.

##### Phillip Turner. D/I: May 26, 2016

Phillip Turner, a city Transit Division employee, filed an OSHA claim against the City for retaliation (discrimination). VML Insurance was notified and they retained Zunka, Milnor & Carter (Elizabeth Southall, Esq.) to represent the City. Ms. Southall filed a position statement on behalf of the City, and the City is currently awaiting a response from OSHA. In my opinion there are valid defenses to this claim, and any settlement or judgment will not exceed the limits of the City's insurance coverage.

Robert H. Downer, Jr. D/I: April 24, 2017

Judge Robert Downer filed a notice of claim dated October 20, 2017 for an injury he sustained from an alleged sidewalk hazard on April 24, 2017 at the intersection of Belmont Avenue and Meridian Street. The claim letter was sent to VML Insurance for investigation and possible settlement. In my opinion, any settlement or judgment will not exceed the limits of the City's insurance coverage.

Damien Woodfolk. D/I: February 23, 2017

Damien Woodfolk was a passenger in a vehicle that was struck by a police vehicle driven by Police Officer James Fink. Mr. Woodfolk alleges that Officer Fink failed to yield the right of way, thereby causing an accident that resulted in bodily injury to Mr. Woodfolk. A Notice of Claim dated July 24, 2017 was received and forwarded to VML Insurance for investigation and possible settlement. While the extent of Mr. Woodfolk's injuries is unknown at this time, we do not believe any potential City liability will exceed the limits of the City's insurance coverage.

Pamela Irving. D/I: April 25, 2017

Pamela Irving was a passenger on a Greyhound bus on April 25, 2017 when a City school bus allegedly struck the Greyhound bus while it was stopped at an intersection. Ms. Irving allegedly sustained injuries and filed a Notice of Claim dated July 11, 2017. VML Insurance was notified of the claim and conducted an investigation, which resulted in denial of Ms. Irving's claim. We believe any potential City liability will not exceed the limits of the City's insurance coverage.

Ronna Gary. D/I: November 18, 2016

The City received a Notice of Claim dated May 11, 2017 from attorneys representing Ronna Gary who alleges that she was sexually assaulted by a City police officer, Christopher Seymore, while he was on duty. Officer Seymore was subsequently charged with two counts of forcible sodomy, and was terminated as an employee of the Police Department. This claim was referred to VML Insurance for investigation. After investigation, the claim was denied. We do not believe any potential liability will exceed the limits of the City's insurance coverage.

Wednesday Bowie. D/I: August 12, 2017

Ms. Wednesday Bowie was struck by a car driven by James Fields while walking down 4<sup>th</sup> Street near the Downtown Mall. She suffered serious injuries and spent 12 days in the hospital. Her attorney, Mario Williams, Esq., filed a Notice of Claim dated January 11, 2018, alleging the City Police did not take preventive measures to keep vehicular traffic away from the Downtown Mall. The Notice of Claim was forwarded to VML Insurance for investigation, and

subsequently denied the claim. We do not believe any potential liability will exceed the limits of the City's insurance coverage.

J'Kyra Brown. D/A: July 8, 2017

J'Kyra Brown, through her attorney, Thomas Albro, filed a Notice of Claim dated January 4, 2018, alleging she was injured when she was struck by a City police vehicle driven by Officer Jeffrey Jaeger on July 8, 2017 in front of 852 West Main Street. VML Insurance was notified of the potential claim and is investigating the claim.

Margaret Littlepage. D/A: July 18, 2018

Margaret Littlepage alleges she was injured when a JAUNT bus struck her vehicle in the parking lot of the Rio Hill Shopping Center in Albemarle County. The Claimant asserts that JAUNT, Inc. is a government-owned corporation owned by the City of Charlottesville and the Counties of Albemarle, Buckingham, Fluvanna, Louisa, and Nelson. A Notice of Claim letter dated October 1, 2018 was received and forwarded to VML Insurance for investigation.

Taquan Anderson. D/A: July 11, 2018

Taquan Anderson, through his attorney, Jonathan Wren, filed a Notice of Claim dated August 31, 2018, alleging he was injured when a City Transit bus struck his vehicle on Roosevelt Brown Boulevard on July 11, 2018. VML Insurance was notified and is in the process of investigating the claim.

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Pursuant to Mr. Pack's request, by this letter I confirm his representation to you that there are no unasserted claims and assessments that I consider probable of assertion and, if asserted, to have at least a reasonable possibility of an unfavorable outcome.

The information set forth herein is current as of the date of this letter, except as otherwise noted, and we disclaim any undertaking to advise you of changes which thereafter may be brought to our attention. The City Attorney's Office is a department of City government and represents the City as a municipal corporation. No fees for legal services or expenses are charged to the City of Charlottesville.

This response is limited by and is to be construed in accordance with the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December, 1975).

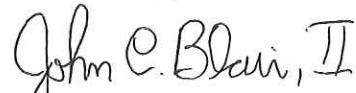
Without limiting the generality of the foregoing, this response is limited to matters which have been given substantive attention by our office in the form of legal consultation and, where appropriate, legal representation, for the time period covered by this letter.

This response is solely for your information in connection with your audit of the financial condition of the City and is not to be quoted or otherwise referred to in any financial statement or other document, in whole or in part, or furnished to any other party or agency without our prior written consent. Notwithstanding such limitation, this response may be properly furnished to others in compliance with court process or when necessary in order to defend you against a challenge of the audit by the City or a regulatory agency, provided that we are given written notice of the circumstances at least twenty days before the response is to be furnished to others, or as long in advance as possible if the situation does not permit such period of notice.

Pursuant to Mr. Pack's request, we wish to confirm as correct our understanding that whenever, in the course of performing legal services for the City, any attorney in this office forms a professional conclusion that the City must disclose or consider disclosing an unasserted possible claim or assessment, we will so advise the City Manager and Director of Finance and will consult with them concerning the question of such disclosure and the applicable requirements of the Statement of Financial Accounting Standards No. 5 of the AICPA Professional Standards.

Please feel free to contact me if there are any questions regarding the contents of this letter, or if any additional information is needed.

Sincerely yours,

  
John C. Blair, II  
City Attorney

cc: Mike Murphy  
Chris Cullinan  
Glen Pack  
City Council  
(all by electronic mail)